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Patent EMC-01-018  
U.S.S.N.: 09/933,468

REMARKS

DEC 04 2006

In response to the final Office Action mailed September 6, 2006, applicant respectfully requests reconsideration. In the Office Action, claims 1-24 were rejected. Claims 1-24 remain pending in the application. Based on the following remarks, applicant respectfully requests reconsideration.

Claim Rejections Under 35 U.S.C. §102 and §103

Claims 1, 2, 6-8, 13, 14 and 18-20 were rejected under 35 U.S.C. §102(e) as being anticipated by Evans (US-6,966,017). Furthermore, claims 3-5, 10-12, 15-17 and 22-24 were rejected under 35 U.S.C. §103(a) as being unpatentable over either Evans alone, or as being unpatentable over Evans in view of Miner. This rejection is respectfully traversed, as Evans is not prior art to the present application.

In the previous response, applicant submitted a Declaration under 37 C.F.R. §1.131 to establish invention of the subject matter of the rejected claims prior to the effective date of the reference on which the rejection is based. The effective date of Evans is June 20, 2001. By the previous declaration, applicant believed that he established that the invention recited in claims 1-24 was conceived and reduced to practice as early as September 14, 2000.

However, the examiner stated that there was no establishment of how the code in Exhibit A corresponds to the claimed invention and indicated that the applicant needs to show that (a) the code corresponds to the claims and (b) that it worked for its intended purpose in order to establish reduction to practice.

Applicant submits herewith another declaration under 37 C.F.R. §1.131 to establish that (a) the code corresponds to the claims and (b) that it worked for its intended purpose in order to establish reduction to practice. The declaration sets out, with specific reference to Exhibit A, which is a directory listing of a UNIX file server containing the source code files for the invention, and Exhibits B-D, which show the relevant portions of the source code for the source code files listed in Exhibit A, how each element of independent claim 1 is implemented in the code.

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Further, paragraph 9 of the declaration states that the code had been thoroughly tested to confirm that it worked for its intended purpose, which confirmation is buttressed by the fact that the code is included in products that have been sold by the assignee.

Applicant asserts that the evidence submitted in the present declaration, coupled with the evidence submitted in the declaration filed on June 12, 2006, establishes that the invention recited in claims 1-24 was conceived and reduced to practice at least as early as September 14, 2000.

Accordingly, Evans is not prior art to the invention recited in claims 1-24, and the rejections of claims 1, 2, 6-8, 13, 14 and 18-20 under 35 U.S.C. §102(e) and the rejections of claims 3-5, 10-12, 15-17 and 22-24 under 35 U.S.C. §103(a) are improper and should be withdrawn.

Based on the foregoing, applicants respectfully assert that claims 1-24 are allowable over the art of record and respectfully request that a timely Notice of Allowance be issued in this application.

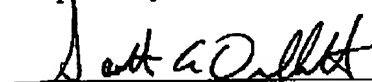
In the event the Patent Office deems personal contact desirable in disposition of this matter, the Office is invited to contact the undersigned attorney at (508) 293-7835.

Please charge any fees occasioned by this submission to Deposit Account No. 05-0889.

Dated: \_\_\_\_\_

11/6/06

Respectfully submitted,



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